IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	**No. 3:14-CR-00293**
	§	**Chief Judge Lynn**
JOHN WILEY PRICE	§	
DAPHENY ELAINE FAIN	§	

DEFENDANTS' JOINT UNOPPOSED MOTION FOR MISCELLANEOUS RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants, JOHN WILEY PRICE and DAPHENY ELAINE FAIN, by and through their Attorneys of Record, hereinafter referred to as "Counsel," and hereby file this, their Motion for Miscellaneous Relief. Specifically, Defendants request that this Court extend to Defendants protection from the public release of a specific limited category of material admitted as evidence in the above numbered cause. In support of this motion, Defendants show the Court the following:

I.

On June 27, 2011, agents and representatives of the Federal government executed search warrants at multiple locations. During the execution of the search warrants, the agents took photographs of Defendants' personal and real property. The photographs include: the interior of Commissioner Price's County office; the exterior and interior of both Defendants' homes and personal items throughout those homes; and the items on each Defendant's person. In addition, the government executed a search of the MMS offices of Ms. Fain. The Defendants object to the release of these photographs that disclose, *inter alia*, the location of their homes as well as photographs of the interiors of those home, places which – but for the execution of search warrants – would require an invitation.

II.

During the eight-week trial, hundreds of government and defendant exhibits were admitted into evidence. Many of those exhibits include photographs of the Defendants' property, both real and personal, in which the Defendants have a reasonable expectation of privacy. As such, the public release of the photographs will violate Defendants' privacy rights. The primary basis for the search warrants, the execution of which resulted in hundreds of photographs of Commissioner Price's home and personal items within his home as well as the interior of his office, were charges of bribery on which he has been acquitted. Ms. Fain has, of course, been acquitted of all counts against her. With respect to the remaining charges against Commissioner Price on which the jury did not reach a verdict, there exists at least the possibility that the government may seek again to try those charges. In such circumstances, the wholesale release of photographs of the Commissioner Price's real and personal property is unwarranted and could well impact his right to a fair proceeding, as guaranteed by due process of law.

III.

Following the trial, members of the media have requested copies of certain exhibits, including photographs taken by federal agents during the execution of the search warrants.

IV.

Defendant Price objects to the release of the following three images from Government Exhibit #1150: LOC-A 3-11-MJ-310 Photo-1-0009, LOC-A 3-11-MJ-310 Photo-1-0106, LOC-A 3-11-MJ-310 Photo-1-0108. Additionally, Defendant objects to the release of the following Government Exhibit numbers in their entirety: #1151, #1152, #1153, #1154, #1159, #1167 and #1168.

Defendant Fain objects to the release of Government Exhibits #1157, #1158, #1160, #1168, and #1169 in their entirety. As to #1157, if the Court elects to release that exhibit over Ms. Fain's objection, Fain respectfully requests that, at a minimum, the following images be redacted from the exhibit: LOC-E 3-11-MJ-314 Photo-1-0001; LOC-E 3-11-MJ-314 Photo-1-0002, LOC-E 3-11-MJ-314 Photo-1-0003, LOC-E 3-11-MJ-314 Photo-1-0047; LOC-E 3-11-M J-314 Photo-1-0187.

AUTHORITY

As an initial matter, there is no Constitutional right of physical access to trial exhibits. Belo Broad. Corp. v. Clark, 654 F.2d 423, 428 (5th Cir. 1981). The Fifth Circuit has recognized a common law right to inspect and copy judicial records, but that right is not absolute. *Id.* The decision whether to close judicial records to the public is a determination left to the discretion of the district court, in light of the facts and circumstances of the case. *Id.* In this case, several factors weigh in favor of denying the media access to photographs of the Defendants' homes and offices including the Defendants' right to privacy in their homes and private spaces, safety concerns arising from disclosure, and Commissioner Price's right to a fair trial on the remaining counts, should the government elect to proceed on those counts.

It goes without saying that a person's home is where "privacy expectations are most heightened." *California v. Ciraolo*, 476 U.S. 207, 213 (1986). In this case, the requested exhibits include multiple photographs of the exteriors and interiors of the Defendants' homes. The exhibits include photographs of bedrooms, bathrooms and kitchens. The search warrant photos show family pictures, medicines, food items, clothing articles of all kinds and generally the intimate detritus of daily life. There is no public, non-prurient interest to be served by release of such photographs and the intrusion on the privacy rights of the Defendants, one of whom has been acquitted on all counts, is substantial.

The Defendants submit it is well settled law that material should not be released to the public if release of the material will cause an unjustifiable invasion of an individual's privacy. In *United States Department of Justice v. Reporters Committee for Freedom of the Press*, the Supreme Court held "…as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no "official information" about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is "unwarranted.'" *U.S. Dept. of Justice v. Reporters Committee For Freedom of Press*, 489 U.S. 749, 780 (1989).

Furthermore, Rule 49.1, F.R.Crim.P., authorizes the Court, for good cause, to limit the dissemination of information, including documents filed with the Court, a category which applies to trial exhibits. As this Court is aware, this case has engendered a great deal of public interest. In the aftermath of trial, both defendants have been advised of threats against them. The exemption of the above limited set of photographs from public disclosure is advisable in the context of those threats.

In light of Commissioner Price's acquittal on bribery charges and Ms. Fain's acquittal on all charges, and in consideration of the tax charges which remain, pending possible further proceedings, as well as both Defendants' privacy interests and right to due process of law, good cause is shown for this narrow-requested limit upon the release of exhibits.

WHEREFORE, premises considered, the Defendants pray that this Court enter an order granting this Motion and declining to release to the media the exhibits listed above.

Respectfully submitted,

BY:

/s/ *Chris Knox*
CHRISTOPHER KNOX
900 Jackson Street
Suite Number 650
Dallas, Texas 75202
214.741.7474; 214.747.7711 (f)
chrisknox@knoxcriminaldefense.com

/s/ *Shirley Baccus-Lobel*
SHIRLEY BACCUS-LOBEL
Law Office of Shirley Baccus-Lobel, PC
8350 Meadow Road, Suite 186
Dallas, Texas 75231
214.220.8460; 214.987.3169 (f)
sbl@lobellaw.com

Attorneys for Commissioner Price

/s/ *Marlo P. Cadeddu*
MARLO P. CADEDDU
Law Office of Marlo P. Cadeddu, P.C.
3232 McKinney Avenue, Suite 700
Dallas, Texas 75204
214.220.9000; 214.744.3015 (f)
mc@marlocadeddu.com

/s/ *Thomas W. Mills*
THOMAS W. MILLS
Mills & Williams, L.L.P.
5910 N. Central Expressway, Suite 980
Dallas, TX 75206-5141
214.265.9265; 214.363.3167 (f)
tmills@millsandwilliams.com

Attorneys for Ms. Fain

CERTIFICATE OF CONFERENCE

I hereby certify that I have discussed this matter with the Assistant United States Attorneys assigned to this case and the Government is unopposed to Defendants' requests.

CHRISTOPHER M. KNOX

CERTIFICATE OF SERVICE

This is to certify that on the 12th day of May 2017, a true and correct copy of the above and foregoing Motion was filed with the court, and through that system, all parties, by and through their respective attorneys, including the Assistant United States Attorneys handling this case, have received this motion.

CHRISTOPHER M. KNOX